S.B.Civil Revision Petition No.294/2006

Govind Tripathi.
vs.
Rajasthan Financial Corporation and another.

Date : 26.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. NK Rastogi, for the petitioner.
Mr. DS Rajvi, for the respondent no.1 RFC.
Mr. V Rajpurohit, for the respondent no.2.

- - - - -

At the request of learned counsel for the parties, this revision petition is heard finally and decided.

Brief facts of the case are that a loan of Rs.22,500/- was advanced to the petitioner/non-applicant no.1 for his unit Shri Ram Printers, Chittorgarh on 16.11.1983. For this, according to the respondent RFC, the documents were executed by the petitioner/non-applicant no.1. The non-applicant no.2/respondent no.2 stood surety for repayment of loan availed by the petitioner/non-applicant no.1. He executed the documents on 5.12.1983 and also mortgaged his residential house with the respondent RFC. The borrower became defaulter, thereupon, according to learned counsel for the petitioner, his property was taken over. The respondent RFC thereafter submitted an application under Section 31 of the State Financial Corporations Act, 1951 (for short 'the Act of 1951'). The notices were issued to

the petitioner/borrower and surety/respondent no.2. The petitioner contested the application by filing reply whereas the respondent no.2's advocate pleaded no instructions and, therefore, the court below proceeded ex-parte against the respondent no.2. It appears from the ultimate order passed by the learned Additional District Judge no.1, Chittorgarh dated 5.2.2004 that ten issues were framed in a proceedings under Section 31 of the Act of 1951 which are in relation to the claim and contest about the advancement of loan and its becoming due also. A specific issue was framed about limitation. Thereafter the court also proceeded ex-parte against the petitioner also. However, the learned Additional District Judge No.1 accepted the application for computation under Section 31 of the Act of 1951 in relation to Rs.1,31,161/- and thereafter, the court below ordered that the property mortgaged by the non-applicant no.2/surety, details of which have been given in para no.4 of the application, may be put to auction and the RFC shall have right to recover the amount from that auction along with interest.

The non-applicant no.1/borrower/petitioner submitted an application under Order 9 Rule 13 CPC which was entertained by the court below and that has been dismissed by the order dated 7.5.2005. Hence, this revision petition by the petitioner against the order dated 7.5.2005.

According to learned counsel for the petitioner, the court below committed serious error of law in rejecting the

petitioner's application under Order 9 Rule 13 CPC.

Learned counsel for the respondent vehemently submitted that the revision petition is not maintainable in view of the fact that against any order passed by the civil court under the Act of 1951, an appeal lies under Section 32(9) of the Act of 1951. Secondly, the petitioner has no locus standi to challenge the order dated 5.2.2004 as by this order, the court below has allowed the Corporation to sell the mortgaged property of the guarantor and has not passed any order against the petitioner borrower. It is also submitted that even the application under Order 9 Rule 13 CPC was not maintainable as the order dated 5.2.2004 has been passed under a special Act and not in a suit.

Learned counsel for the petitioner vehemently submitted that it is clear from the allegations made in the petition under Section 31 of the Act of 1951 that the RFC alleged that the petitioner/borrower is defaulter and, therefore, they have right to recover the amount from the borrower also. They also claimed relief against the petitioner. Not only this, the RFC has not given credit of the amount which they have recovered from the assets of the petitioner. It is also submitted that in last para of the order dated 5.2.2004, the court below clearly decreed against both the non-applicants by mentioning that the application is allowed against the non-applicants about Rs.1,31,161/-.

Learned counsel for the petitioner vehemently submitted that it is clear that the loan was advanced for the year

1983 and the petition under Section 31 has been filed on 22.5.2002, therefore, the petition is time barred. Learned counsel for the petitioner in this regard heavily relied upon the judgment of the Hon'ble Apex Court delivered in the case of Maharashtra State Financial Corporation vs. Ashok K. Agarwal and others reported in 2006(3) SCALE 661.

I have considered the submissions of learned counsel for the parties and perused the facts of the case.

It appears from the facts of the case mentioned in detail above that the court below, while deciding the application under Section 31 of the Act of 1951, passed the ultimate order only for sale of the property of the mortgagor. Mere use of word “non-applicants” in the operative part of the order dated 5.2.2004 is of no consequence and appears to have been mentioned inadvertently which has been made clear by the Court itself by specifically mentioning that the Corporation shall have right to recover the amount from the mortgaged property of the non-applicant no.2/guarantor.

In view of the above, this Court is not inclined to decide the issues raised by the parties when they are not arising in this litigation as well as in this revision petition. The petitioner cannot be said to be aggrieved against the order dated 5.2.204 because the scope under Section 31 of the Act of 1951 is limited and not akin to a decree of the Civil Court for money or for recovery of the amount from the mortgaged property. This is an order under

a special Act. In view of the above, the contention of the learned counsel for the petitioner that his amount has not been given due credit by RFC is concerned, that was not relevant because of the reason that for that purpose, the petitioner should have taken steps in accordance with law under the relevant provisions of law for settlement of account.

In view of the above discussion, I do not find any merit in this revision petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya